IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

FIRST NATIONAL BANK OF ST. LOUIS,
Plaintiff in Error
(And Petitioner for Certiorari),
v.
STATE OF MISSOURI, at the Information of JESSE W. BARRETT, Attorney-General,
Defendant in Error
(And Respondent for Certiorari).

No. 252.

On Writ of Error and Petition for Writ of Certiorari to the Supreme Court of Missouri.

MOTION OF THE STATES OF WISCONSIN, MINNESOTA, INDIANA, IOWA AND ILLINOIS FOR LEAVE TO FILE BRIEF AND SUBMIT ORAL ARGUMENT UPON THE HEARING OF THE CAUSE.

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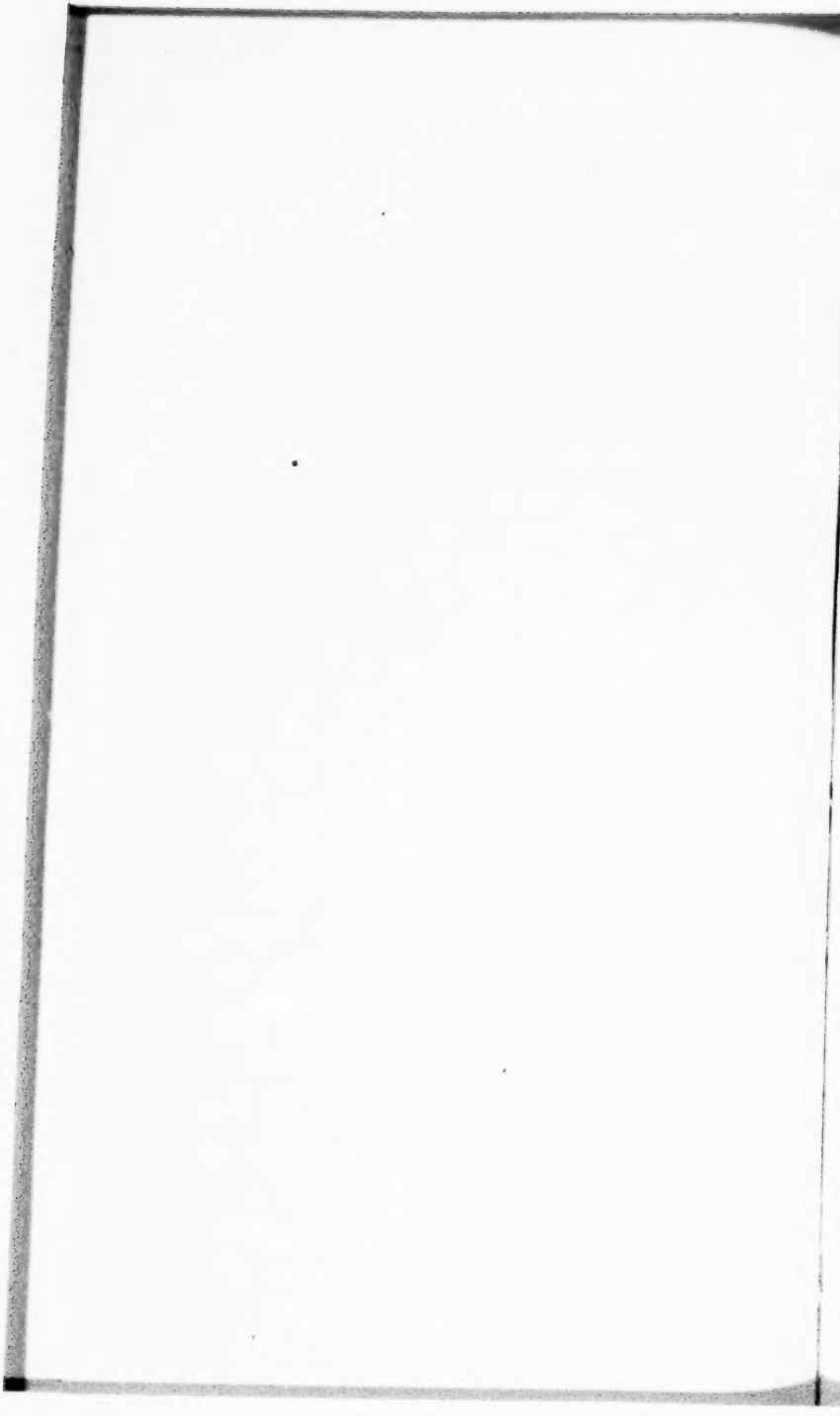

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Come now the States of Wisconsin, Minnesota, Indiana, Iowa and Illinois, by their respective Attorneys-General, and move the Court that they may submit both oral argument and brief upon the hearing of this cause on their behalf, and in support of the motion state to the Court:

First. That the legislation of their respective states is adverse to the establishment, maintenance or operation of branch banks within their limits, and unless a state is permitted to vindicate and enforce its laws against such usurpation as is set forth in the information herein, like usurpations upon their authority will be attempted and they will be without remedy

for the wrongs suffered by them from such usurpation.

Second. That national banks, as agencies of the Federal Government, have no authority under the law of their creation to establish, maintain or operate branch banks, and that the establishment, maintenance or operation of branch banks by national banks is an infraction of the laws of the states which the respective states may prevent, abate or redress by due and appropriate process or proceeding initiated in its own courts.

Notice of this motion has been served on counsel for both parties to this cause and on the Solicitor-General of the United States.

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STATEMENT.

With the permission of the Court, the States of Wisconsin, Minnesota, Indiana, Iowa, Illinois, Utah, New Mexico, North Dakota, Arkansas, Nebraska, Kansas, Connecticut, Wyoming, West Virginia and Kentucky file this brief in aid of the defendant in error.

The interest which these states, in conjunction with a number of others, have in the proper determination of this cause is apparent from the fact that their respective state-wide banking systems consist solely of a large number of individual, separate and

locally owned institutions possessing no branches or outside offices for the reception of deposits, payment of checks or for other business.

Most of these states have by statutes of long standing prohibited branch banking, and such of them as have not enacted prohibitive statutes have respected the policy and law of the Federal Government in its attitude upon the subject by withholding from their system the business of branch banking or by enacting no law for the establishment, regulation or supervision of banks of that character.

From the year (1863) of the establishment of our present national banking system by act of Congress, these states have strictly adhered to the mandate of the federal law. By withholding this power from their own institutions they have protected the national banking associations from the destructive, centralizing and monopolistic effect of a branch banking system. In keeping with this more wholesome policy, and recognizing the inability of national banks to operate branches or branch offices in the city, town or village of their domicile, they, too, during these many years, have so confined their own banks, thereby enabling state and national institutions to operate in the same competitive atmosphere.

To permit an infraction of either the state or national law in this respect would of necessity break down, cripple and perhaps destroy both systems—

state and national—and in a large measure disturb the commercial, industrial and financial activities of the people of the respective states.

For the period of almost sixty years immediately following the enactment of our present national system the Comptroller of the Currency has studiously and faithfully administered the national law in strict accord with legislative intent and policy.

In the early part of 1922 the president of plaintiff in error, at the State Bankers Association of Missouri, announced the intention of that bank to commit the infraction complained of, and on June 15th of that year the branch bank was opened and the unlawful act committed. This announcement and the report of the opening of the branch immediately became a matter of profound national and state concern—of great public concern. Immediately following this bold and defiant act, the question found its way into the active pages of the catalogue of current events or current history; it became the subject of condemnatory resolution by groups and conventions of bankers, business men and political parties, and while all this has been going on, the Comptroller, at all times fully aware of the fact, has failed to act or take any steps to suppress the wrong thus committed, though stating publicly and through official bulletins that he had not and would not issue permits for such conduct. In a word, he has denied the right of plaintiff in error to

establish and operate the branch bank, but has not acted and still fails to enforce the law thus violated.

And now comes the Federal Government, through its Solicitor-General, appearing in this cause, asserting that the states are without authority in their own names to prosecute suits to abate the wrong or stay the arm of a federal agent in the commission of an act not authorized by federal law and which, if allowed, will occasion irreparable injury to the public welfare and general good of the people of the states, and that the Federal Government alone is clothed with authority to sue, and then only as directed by the Comptroller of the Currency. In other words, that the offended states must stand as idle sovereignties and allow their own financial creatures to suffer until the Comptroller of the Currency, a mere ministerial officer or agent of the Federal Union, chooses to act. He may never challenge the unlawful conduct. Therefore, must the sovereign states be compelled to yield to such conduct? Have they, through the Federal Constitution, surrendered so completely their sovereignty as to be unable to abate, stop, or restrain conduct of men and corporations which is injurious to the common good and the welfare of their people when the conduct complained of has not received the sanction of federal law—is inhibited by it—but is claimed by the offender to be authorized under it?

The laws of Congress are the laws of the land. The states cannot ignore or abate them. They must obey, and as we have always understood, may enforce them when enforcement is found essential in the preservation of the society of the states and personal and property rights thereunder. If, therefore, a federal law is being violated by a federal agent or agency, or the federal agent or agency be acting beyond the powers conferred by national authority, and such unlawful conduct be at the same time in contravention of state law or detrimental to its general good, has not the state, as a separate and distinct sovereignty, yielding only to the paramount authority of the Federal Constitution and laws, the full right, concurrent with federal procedure, to protect its own sovereignty and its people against the ravages of such unlawful conduct through any judicial procedure deemed by it appropriate within the due-process clause of the Federal Constitution?

We do not understand that the state claims the right to punish under the federal laws for a violation thereof, but we do understand that the state has a perfect right to protect itself against the onslaught of federal agents not authorized by federal law when such conduct tramples upon the state sovereignty or is in contravention of its law. It may restrain, abate or stop such unlawful conduct by any judicial order, process or proceedings deemed essential and proper

by it, such procedure to be of such orderly character as is usually adopted by the state in the enforcement of its rights, with the full realization that its decision is subject upon writ of error to review by this court upon all questions involving rights under the Federal Constitution or federal laws.

Realizing the necessity of protecting the respective state banking systems against an invasion like unto the present case, and being convinced of the right and power and duty of the states to proceed in such event, we submit the following in justification of such right and power as relating to the subject matter of this cause.

ARGUMENT.

I.

There Is No Federal Authority for Branch Banking.

Under the general law of Congress as originally enacted in 1863, branch banking is not recognized or permitted. While the act contains no positive words of inhibition, it nevertheless confines the business operations of a national bank to "an (one) office or (one) banking house located in the place specified in its organization certificate" (Sec. 5190, U. S. R. S.), and requires the application certificate of each bank (which application certificate must be executed and filed with the Comptroller of the Currency in order that the individuals forming the organization may become a national banking association) to specifically state "the place where its operations of discount and deposit are to be carried on, designating the state, territory or district and the particular county, town or village" (Sec. 5134, U. S. R. S.).

The above legislative exactions without question so restricts the operations to a single location as to necessarily preclude the maintenance and operation of branches. By apt words, and in a single sentence, there is enacted a restricted grant of authority. By the words used, the bank must carry on its operations at a place in a "designated" state and "particular

county, town or village," and must transact its business "at an office or banking house located in the place specified." These words necessarily impel the exclusion of authority to operate at more than one office or one banking house in the designated state or particular county, town or village, or elsewhere.

Since 1863 Congress has enacted much legislation upon the subject of banks, but has made no change in the provisions of Sections 5134 and 5190, U. S. R. S., above referred to.

The defendant in error claims the right to establish branch banks by virtue of its incidental or implied powers. This we deny. Congress has never considered it as either essential or advisable. In only three instances has Congress recognized the advisability of authorizing branch banks, i. e., within the World's Fair grounds at Chicago and St. Louis, respectively, and in the conversion statute (Sec. 5155, U. S. R. S.). In each instance the substantial reason for the authority is most apparent. Such instances, however, dispute the claim that the power is incidental or implied. To be either incidental or implied it must be essential or necessary. Time and again has the matter been called to the attention of Congress and in every instance except as above referred to, it has inferentially concluded such right to be not necessary, and therefore, withheld it from national banking associations. This is admitted by the learned

Solicitor-General at pages 37 and 38 of the Government's brief, where he says:

> "For over fifty years the executive department of the Government has consistently held, as a matter of administration, that the 'usual business' of a banking association must be transacted in a single and well-defined banking building; and this administrative construction of the law has additional weight, not only because Congress has, by supplemental legislation, acquiesced in it by passing laws which, in exceptional instances, authorized branch banks, but also because the agitation for the right to have branch banks has been carried on for many years, and, notwithstanding the vigorous attempt to secure legislation which would permit branch banks, Congress has heretofore refused to authorize such branches."

It, therefore, must be concluded that such authority does not exist, either by express terms or by necessary implication, and, also, that a national banking association is not possessed of inherent power in this direction.

II.

Branch Offices for Receiving Deposits and the Cashing of Checks Are Not Permissible Under Federal Law.

To upturn the law and its long-continued legislative, departmental and generally accepted construc-

tion is a problem for Congress and not for this Court to determine; nor is the wisdom of the problem lodged with the Court.

If Congress did not intend to withhold branch offices for the purpose of receiving deposits and paying checks from national banks, why did it in the conversion section (Sec. 5155, U. S. R. S.) restrict the right to a certain character of branch banks? That is, why did it by definite words require certain qualifying conditions? Why did it say, "It shall be lawful for any bank or banking association, organized under state laws and having branches, the capital being joint and assigned to and used by the mother bank and branches in definite proportions," if it did not intend to exclude the establishment or operation of branch offices of the character in question?

It is plain that when Congress enacted Section 5155, U. S. R. S. (the conversion statute) it did not intend to open the floodgates to innumerable branches, offices and service stations. It was then and still is opposed to branch banks to any extent or in any form, yet it realized that if a state bank possessing legitimate branches wanted to convert itself into a national association, it should have the privilege of doing so. But to be sure that every branch which that state bank then possessed and intended to continue was in reality a bank, it compelled an alloca-

tion of the capital stock, etc., of the bank to and among the mother bank and the branches thereof in proper regulated proportions. Congress did not intend to authorize the conversion of any state bank having branches unless its capital "being joint and assigned to and used by the mother bank and branches in definite proportions" was so continued under federal authority to the same extent as required by such state law. The intent of this language is that under such circumstances only would branches be suffered, and they must be qualified as to capital and circulation, thereby most forcefully imputing a firm intent to again restrict all of the usual operations of national banks to the one office or banking house, and that the exception created by this conversion statute would apply only to branch banks of substance and capital, and would, in effect, be a bank with one office or banking house for its own activities, enabling such parent bank to compete with state banks having like branches in the same competitive atmosphere and upon the same basis. By this conversion statute, Congress has not authorized the conversion of state banks into national banks where the state banks merely possess branch offices for the reception of deposits and the payment of checks. It eliminates all such institutions from the rights of the section.

By construing this section (5155 R. S.) in connection with Sections 5134 and 5190, U. S. R. S., we find the legislative mind has grasped for and used words that negative the right of a bank to conduct any part of its usual business of receiving deposits other than at its one banking house, because receiving deposits is transacting usual business.

A bank, as understood by the American public, is, and always has been, a place for the deposit of money for safe keeping and the withdrawal of the same upon check. The business of receiving deposits and paying checks is "usual" business, and we might say in so far as a large part of the public is concerned, is the principal business of banks. Under no circumstances can it be placed in the category of **unusual business.** It can, with equal propriety, be said that making loans or discounting bills is not usual, but is unusual, business.

The harm branch banks or branch offices would do aside from making the bank complex in operation and difficult to examine, is that it opens the way for the establishment of an office here and an office there, promiscuously, for the purpose of receiving deposits in opposition to smaller banks established in the neighborhood in which the branch office is to be located. Such branch offices thereby become scavengers in the business of obtaining deposits, its operations unwholesome. Centering in monopoly and cen-

tralization, its object to destroy and force out of existence the small neighborhood bank is soon accomplished.

No branch office of a national bank should be established for the reception of deposits and the payment of checks in any industrial or residential center unless it be properly equipped to loan the money of its depositors to the people of the community upon which it depends for its success. This is in keeping with the spirit and purpose of our independent banking system. Whenever the business of a given locality or community becomes of sufficient importance to justify the establishment of a bank, public policy requires it to be a real bank, possessing all of the powers and burdened with all of the duties that a bank should owe to the community. A branch office of another bank, to receive deposits only, would not meet the requirements. It would obtain the deposits of the people in the community, transmit them to the mother bank, where these funds would, to a large extent, be loaned to customers or patrons coming in daily contact and dealing directly with the mother bank at its main office or banking house.

Then, too, in the capital requirements Congress has made it plain that the purpose of the law is to provide for the organization of banks suitable and adaptable to a given locality or community in the large city as well as the small town or village. The

range is from $25,000 to $200,000 as a minimum. Can it be said that Congress intended to encourage the organiation of banks and, as soon as they are shown to be profitable and of service to the community, that they are to be destroyed and driven out or swallowed by larger banks which are allowed to establish offices or service stations in the community, all because of the centralizing and monopolistic disposition of one or a few larger institutions?

From the foregoing we gather the real and substantial idea of the legislative mind in compelling a national bank to transact all of its usual business at one office or one banking house, and although it be said that in this way it is "cribbed, cabined and confined" to one place, there is, nevertheless, a most substantial reason for it—a reason which apparently appealed to Congress—and the courts should not and will not destroy the protection which Congress, by the law in question, gives to the industrial, commercial and banking public.

Sections 5134 and 5190 U. S. R. S. were construed by the Solicitor of the Treasury in his opinion rendered August 10th, 1899. This opinion dealt with the right of a national bank to establish and maintain an auxiliary cash room at some point in the city distant from its banking house, for the purpose of receiving deposits and paying checks. He said, "I am of the opinion that the statute does not authorize

the establishment of an auxiliary cash room in a different part of the city for the purpose proposed" (Instructions of the Comptroller, 1920, p. 110). This seems to have been the construction placed upon the law prior to the date of this opinion and at all times subsequent thereto, and no direct, inexcusable breach thereof can be shown to have been committed save and except in the instant case.

We, therefore, submit that branch offices for the purpose of receiving deposits and the payment of checks, like branch banks, are not authorized.

III.

The States, by Virtue of Their Sovereign Power, Can and Should Suppress or Abate Conduct by National Banks or Other Federal Agencies Committed Without Authority of Federal Law Which is Destructive of Their Welfare, Institutions and Laws.

While the laws of Congress are the laws of the land and in their lawful execution no interference will be permitted to prevail over them, yet when the agents or agencies of the Nation step beyond the authority of their master and violate state laws and undertake to harm the people of the state by the exercise of a function not granted by Congress, then as to such unauthorized acts, any offended state pos-

sesses the inherent right by any proceedings deemed by it proper to abate and suppress the wrongful conduct.

It is the duty of the respective states to protect and safeguard their own institutions, not only by the enforcement of the law under which the institutions exist, but against any intrusion under the guise or unwarranted claim of national authority. Therefore, if the bank, as in this case, has not been lawfully authorized to conduct the business complained of and sought to be abated or prevented, the hand of restraint cannot be laid against the state in the exercise of its sovereign power.

That national banks are instrumentalities of the Federal Government and as such are necessarily subject to its paramount authority goes without question. There is no other warrant for their existence. But simply because they are federal instrumentalities does not imply their right to invade state laws and inflict injury upon the society and business of the state by conduct, not only unauthorized, but prohibited by Congress. Being creatures of federal authority does not shield them against the complaint of the state founded upon unlawful conduct not permitted by federal law .

The Government in its brief assumes the position that a state court cannot impede or suspend the operations of a federal instrumentality upon the ground

that the act of Congress under which the federal instrument is operating is unconstitutional. This we deny. The Government has found no authority of this Court to sustain its position. It is fundamental that the state, being a distinct and separate sovereignty, has a right in any case where its interests are affected to challenge the validity of an act of Congress or the right of a federal agent to commit an act claimed by it to be committed under authority of federal law. It is true the judgment and decision of the state court is subject to review by this Court as the final arbiter of the law upon the subject, but the primary right of the state in a case of this sort should, we feel, stand admitted by all—this to the end that both sovereignties, to a certain extent dual in character, may work side by side, each relying in full confidence upon the guaranties afforded by the Constitution of the United States and upon the wisdom, experience and learning of this Court as the final arbiter between them upon constitutional and federal questions when either feels itself aggrieved by the conduct of the other.

The Government, at page 13 of its brief, refers to two cases in support of its position as above stated as being leading cases upon the subject, to wit, Ableman v. Booth, 21 How. 506, and Tarble's case, 13 Wall. 397. An examination of these cases will dis-

close the presentation of a situation entirely different from the one here involved.

The two cases of Ableman v. Booth and United States v. Booth, 21 How. 506, argued and submitted together in this Court, were cases wherein the defendants were held in violation of federal law by the federal court. Habeas corpus proceedings were instituted in a state court, and the prisoners discharged on the ground that the federal laws under which they were held and convicted were unconstitutional. This Court, of course, held that state courts have no right to release on habeas corpus a prisoner held or convicted by a federal court for violation of a federal law.

In the Tarble case, above referred to, Tarble had enlisted in the United States army. It was claimed that he was under age and that he had enlisted under an assumed name. He sought release by habeas corpus proceedings in the state court. The commanding officer of the army made a return to the effect that he, as First Lieutenant, had by due authority command of all soldiers recruited for the army in Madison, Wisconsin; that the prisoner under the name of Frank Brown was regularly enlisted as a soldier in the United States army for a period of five years unless sooner discharged by proper authority; that he had taken the oath required in such case; that subsequently he deserted the service, and being re-

taken, was then in custody and confinement under charges of desertion, awaiting trial by the proper military authority. This Court properly held that the state court was without jurisdiction to issue the writ of habeas corpus because it appeared that the prisoner was held by an officer of the United States; that he had submitted himself to the military authority of the United States as an enlisted soldier, and he had his remedy through the regularly constituted channels established by the Government if he was improperly held.

To have held differently either in this or in the Ableman case would be permitting a state court to interfere with the lawful operations of Federal agents as well as Federal judicial authorities regularly and lawfully constituted. That, however, is not this case. Both Tarble and Ableman were within the jurisdiction of the Federal Government. Their right to relief, if improperly held, could be clearly ascertained through Federal instrumentalities; but here, the sovereign state has been offended; its laws trampled upon; its institutions injured. Must it submit to this, even though it can secure redress, as it is seeking to do in this proceeding, without contravening Federal law or policy, but on the contrary in perfect harmony therewith.

This Court said in Moore v. Illinois (14 Howard

13), approved in Grafton v. United States (206 U. S. 333), that:

> "An offense in its legal signification means the transgression of a law. * * * Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the law of either."

What is true of an act which constitutes a crime against the state and against the United States is, a fortiori true of a course of conduct which is a usurpation upon the sovereignty of both. The establishment and conduct of a branch bank not being authorized by Congress to anyone and being expressly forbidden by the state statute constitute an usurpation upon both sovereignties, the usurpation being a wrong as to each as being a transgression of its law. That a ministerial officer of the United States does not choose to enforce its laws, is indifferent to their violation, does not militate against the right of the state. The right of the state is measured by its laws in so far as they do not conflict with the laws of the United States. As said by Justice Bradley in the Siebold case, the power of the United States to "enforce its laws and to execute its functions in all places does not derogate from the power of the state to execute its laws at the same time and in the same

places. The one does not exclude the other, except where both cannot be executed at the same time." We grant that a national bank is a federal agency and that it may execute its functions wherever and in whatsoever manner Congress has authorized, but the operation of a branch bank is not one of its functions. If it is, of course, that is the end of the matter, and by the same token, if it is not, there is something more to be said. If it is not, there is no conflict between state and federal authority. That as an incident to enjoining the usurpation upon state authority the usurpation upon federal authority will cease is but a consequence of the same act being a usurpation upon both. No evil results are to be apprehended from the state's vindication of the authority it asserts. It is the consequence of a denial of the state's authority that is rather to be apprehended. If a national bank may establish a branch or branches in the city of its location in defiance of all law, because a ministerial officer of the Federal Government will not act to restrain, then his indifference or caprice becomes the measure of the bank's authority and it may establish branches wheresoever it pleases in the state. And so it may usurp other functions. It may, regardless of the restrictions of federal law, assume the functions of executor, administrator, curator, guardian and generally all trust functions, and

the complaint of the state of the usurpation upon its authority be met with the answer that, "You are without redress for the wrong you suffer, because the conduct of which you complain is also a usurpation upon the authority of the United States."

Where the same act is a crime against both sovereigns, the entrance to that extent of the Federal Government into the field does not exclude the state, although it is recognized that on humanitarian principles both governments should not, and would not, save in exceptional cases, prosecute and punish. The just and reasonable demands of both governments would be met by one prosecution and one punishment, and where the one had begun action the other would remain inactive unless there was reason for a contrary course. But in such case no conflict of authority is involved, for the law of each sovereign is in harmony with the law of the other, and the possible or probable action of the one is invoked in vain against the action of the other. This argument finds support in the recent cases of First National Bank v. Union Trust Co. (244 U. S. 427) and American Bank and Trust Co. v. Federal Reserve Bank (256 U. S. 350).

IV.

As to the Character of the Proceeding Employed by the State in Securing the Relief to Which It Is Entitled.

(a)

The State possessing the right to proceed may employ such judicial means as it may deem appropriate under its own judicial system with the full right of the aggrieved party to obtain a review by this Court of the judgment, final order or decree upon writ of error. Under a long line of decisions this will pass without fear of being questioned.

We have examined the information filed by the Attorney-General of Missouri in the Supreme Court of that state in this cause. It is in the nature of, if not in fact a bill in equity which, from the history of that court, as ascertained from its records, has been adopted as a means of relief from unlawful conduct of corporations inimicable to and in contravention of the law and policy of the state. It is not an information in quo warranto and although termed by some as being in the nature of a writ of quo warranto, it nevertheless, in that state, takes the form of and assumes the position of a bill in equity asking for equitable relief against the plaintiff in error on account of conduct in violation of the

law of Congress, and which unlawful conduct being also in violation of state law, tramples upon such state law and is destructive of the financial, business and industrial interests of that state. The information asks for a temporary restraining order against not only the bank, but its officers, agents and servants as well, which is a means commonly used in cases of this sort in that state.

In addition, as in all cases in equity, it asks "that such other orders and relief be granted as to the Court shall seem meet, just and proper."

That the information in this cause and the relief sought thereby is distinctly equitable seems to be admitted by the Government in its brief at page 6, where it says:

> "While an ouster is prayed for, yet none was asked and none was given against the corporate entity. What was attempted was to restrain by a pretended ouster a federal instrument from operating its branches in the State of Missouri, and the relief granted was essentially an injunction, which sought to restrain the bank from maintaining certain branch offices (banks) in the State of Missouri."

Missouri is asking that the bank be restrained from maintaining a certain branch bank in that state and establishing others therein. From the language of the information and pleadings filed by the bank in

opposition thereto, as well as the final conclusions of the state court thereon, and the relief obtained therefrom, it is in every respect a proceeding in equity. It did not seek to deprive the bank of any of its lawful rights or to oust it of any of its charter powers.

It is immaterial, however, to this Court what this plea may be called. The case is here on writ of error for the substantial purpose of determining whether the conduct complained of is permissible under federal law and if not, can such conduct be suppressed by the state.

(b)

This is not a suit to exercise what is generally known as "visitorial power" over a corporation. The right of the Government through the Comptroller to make such visits by judicial proceedings or otherwise is admitted; the right of the Government through the Comptroller of the Currency to exact from the banks a strict compliance with all of the national laws is also admitted. We know the Comptroller is authorized under Section 5239, U. S. R. S., to bring suit for forfeiture of charter whenever, in his judgment, the bank has violated any of "the express provisions" of the National Bank Act. Having brought national banks into existence with certain restricted

and definite powers, it is but natural that Congress would and should enact laws for the regulation, control, examination, winding up and dissolution of those institutions, as well as to confine them to their charter powers. But the fact that Congress has so enacted does not mean, or even imply, that the state, in its sovereignty, is without authority to require a due observance of the law by such banks when its interests are injured or its rights invaded, and such injury and invasion be occasioned by an act of a national bank not authorized by its charter.

This case no more partakes of the exercise of a visitorial power than does the enforcement of any private right against a national bank, because of an unwarranted or unlawful transaction. The right of the state is deeper than the mere right of visitation. It is an inherent right of the state to abate unlawful conduct of national agencies when the tendency of such conduct is to paralyze the institutions and interests of the state which are objects of its care and protection, and that right becomes most apparent when the ministerial officer of the federal government, having in charge the enforcement of the federal law, fails or refuses to act.

The right of the State to proceed is always present, but the necessity for such proceeding should be avoided by prompt action upon the part of the Federal Government. It generally is thus avoided and

consequently no case of this exact character involving the operations of national banks has heretofore found its way to this court, and it is only in cases of this sort that the States here represented insist upon the right to a free exercise of their respective sovereign powers.

The position assumed by plaintiff in error and the Government in this case is not supported by the authorities submitted by them upon this point. For instance, in the case of **Tennessee v. Davis (100 U. S. 257)** it was necessary for this Court to find that the act complained of was committed by warrant of Federal authority before it could hold that the officer was protected against state interference.

The cases of **McCulloch v. Maryland (4 Wheat. 316), Davis v. Elmira Savings Bank (161 U. S. 275),** and **McClellan v. Chipman (164 U. S. 347),** cited by plaintiff in error and the Government, are all cases holding that Federal agencies, being subject to the paramount authority of the United States, cannot be interfered with by the States on account of conduct for which Federal authority has been given. These cases also as clearly hold that such immunity cannot be afforded when the conduct complained of violates Federal law.

Therefore, if the conduct complained of be without authority of both State and the Federal Government, is there any reason why, in our

system of government, either the Nation or the State may properly intervene, suppress and restrain? For that while our system of government is dual in its nature, yet throughout its entire history the paramount authority of the Federal Government has been recognized, and because thereof suitable means have always been provided for the transmission of causes from the state court to this Court on writs of error, thus enabling the various states of the Union and the Federal Government to work in entire harmony, and in case of disagreements as to either the law or the construction of the law as it pertains to the Federal Government, or rights thereunder, yield to the final and ultimate decision of this tribunal.

We, therefore, in the spirit of good faith, loyalty and law, submit that the conduct of the plaintiff in error complained of by the State of Missouri is unlawful, interferes with the society and institutions of that state, and that the state, in the exercise of its inherent governmental power, is clothed with authority to institute and prosecute this cause.

Respectfully submitted,

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